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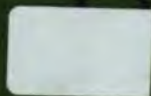
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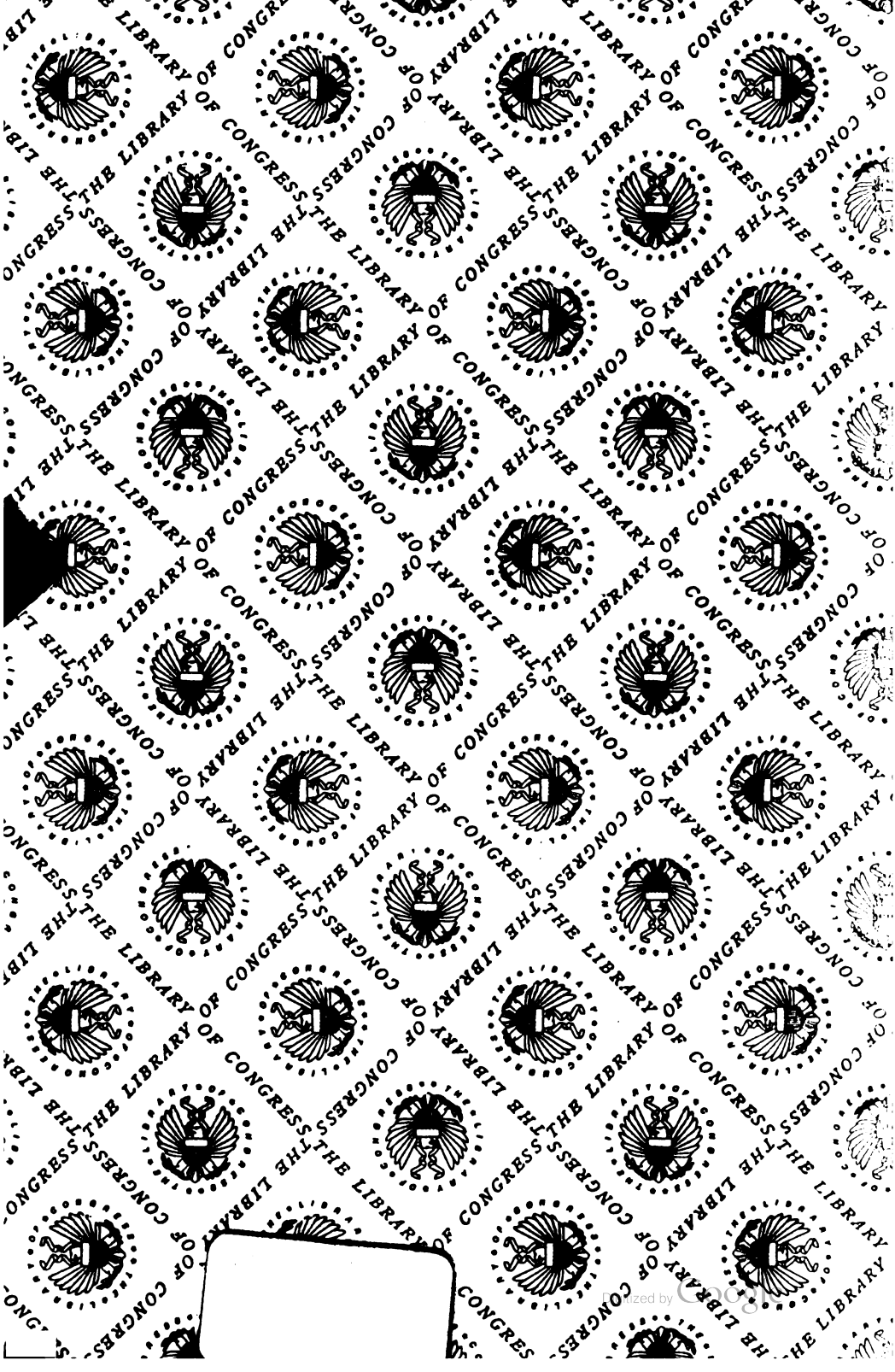
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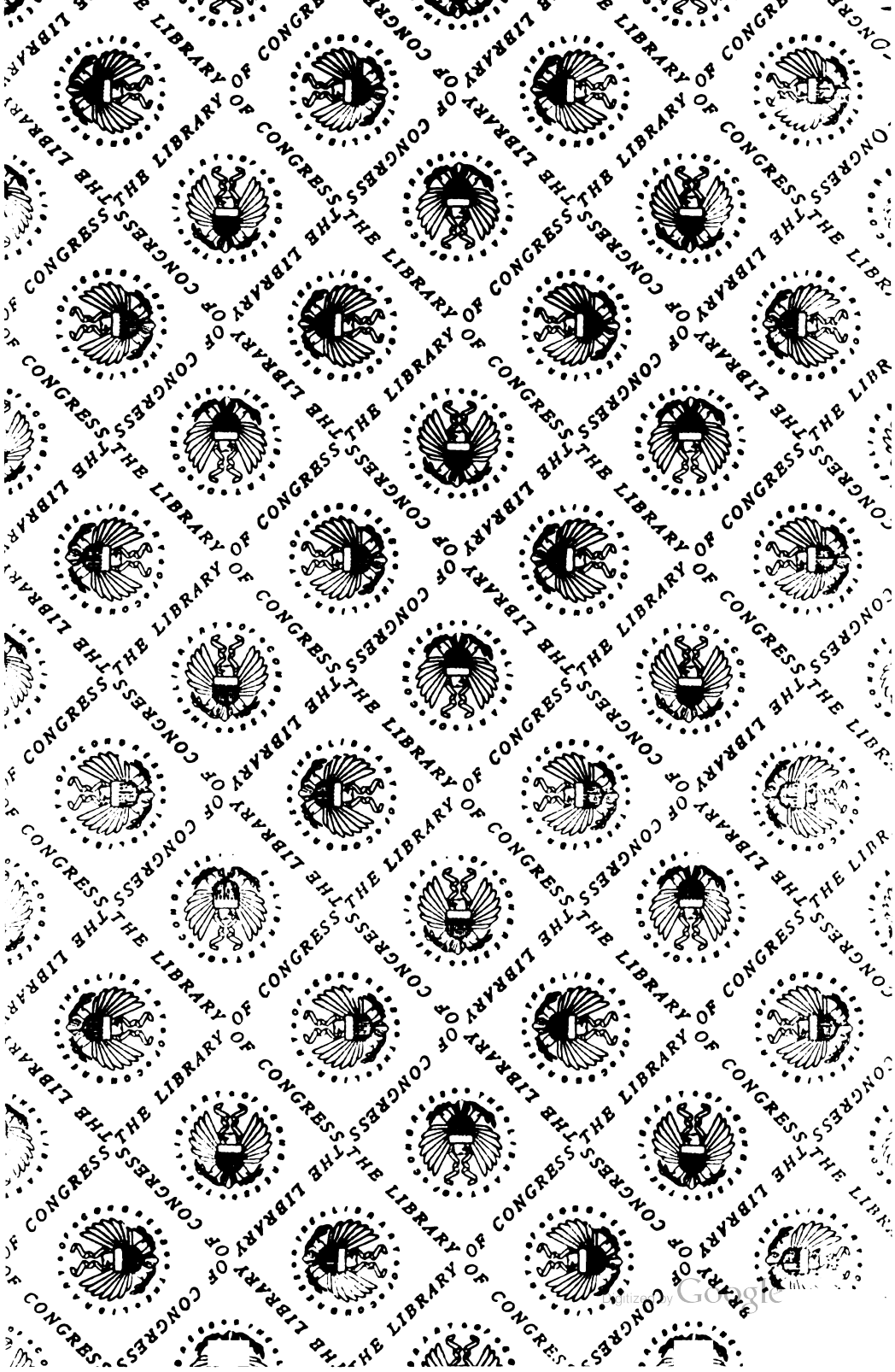
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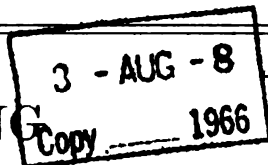




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TO PRESERVE THE PURITY OF OUR FLAG

HEARING



BEFORE THE

COMMITTEE ON THE JUDICIARY

(SUBCOMMITTEE NO. 1—CIVIL AND CRIMINAL LAW)

HOUSE OF REPRESENTATIVES

SIXTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 8987

STATEMENT OF

HON. J. M. C. SMITH,

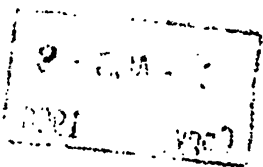
MEMBER OF CONGRESS FROM MICHIGAN

Serial 56

JANUARY 23, 1918



**WASHINGTON
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1918**



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HOUSE OF REPRESENTATIVES.

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TO PRESERVE THE PURITY OF OUR FLAG.

SERIAL 56.

COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE NO. 1,

HOUSE OF REPRESENTATIVES.

Wednesday, January 23, 1918.

Subcommittee No. 1, on Civil and Criminal Law, met at 3 o'clock p. m., Hon. Charles C. Carlin presiding.

Mr. CARLIN. Mr. Smith, the subcommittee will now be glad to hear you on your bill (H. R. 8987) to preserve the purity of our flag.

STATEMENT OF HON. J. M. C. SMITH, OF MICHIGAN.

Mr. SMITH. Mr. Chairman, I wish to express my gratitude for your very great kindness in giving me this hearing during this busy session of Congress, and especially during the hours that Congress is in session, and, showing my appreciation, I will make my remarks as brief as I can to explain the purpose of the bill.

As soon as war was declared I had my attention called a number of times to the fact that there is no Federal statute to prevent the desecration of the flag, and I was asked to draw up a bill and file it,

which I did last April. But I had no precedent to go by. I just drew up a bill offhand, and I found that possibly it was a little too broad, covering some uses that might be proper but which might come within the bill as then drawn. So that just recently I filed a new bill, and I will say that it is a copy of the statute that is enacted for the District of Columbia, omitting the part referring to advertisements and the penalty; but otherwise I have taken the offenses which this bill covers and copied it out of the act for the District of Columbia, leaving out those two provisions, and making the penalty for willful violation, intentional violation, or desecration of the flag a little more severe than it is in the District bill. The exact wording of the second section of this bill is the same as that in the District of Columbia bill, and by doing this I found that it would cover exactly the objects sought to be covered; and they having passed Congress and been enacted by Congress, this would relieve the committee, possibly, from any explanation that would be necessary to make of any other words or offenses covered by this bill.

Mr. WHEELER. Is the act in the District of Columbia entitled "An act to preserve the purity of the flag"?

Mr. SMITH of Michigan. "To prevent the desecration of the flag."

Mr. WHEELER. Not the purity of the flag?

Mr. SMITH of Michigan. No.

Mr. WHEELER. I object to the words "purity of the flag." You might say, "the sanctity of the flag," but "purity" goes more to personal virtue, I think.

Mr. SMITH of Michigan. I think that is a very proper comment on it. That is inherent in the flag itself, for we do not violate the color and form of the flag, but the sense, I think, is included in this; but there would be no objection, and I would think that possibly the title you suggest, "To preserve the sanctity of the flag," cover the purpose exactly.

Mr. NELSON. "To prevent the desecration of the flag"?

Mr. SMITH of Michigan. Or "To prohibit the desecration of the flag." Either title would cover it, while the purpose might be better subserved by such a title. It could be easily amended to add or change a word of that kind.

I am not going to discuss the fact that this is absolutely a time, above all times, when I think that sedition should be suppressed. I think that the people should get behind the object and the purpose that we have in hand. It is not necessary to say that we have our boys in the war fighting for the flag. I have a case here, decided by Justice Harlan, in Two hundred and fifth United States Reports, which says that innumerable wars have been caused by insults to the flag of a country, and in that case he speaks of the office of the flag: the purpose of the flag, that it expresses the authority of the country that it belongs to; and when we are asked if there is any act passed by the Congress of the United States, or any Federal statute, to preserve the flag the boys are fighting for, we have to say that there is not. Then I say it is time, and now above all times, that we should have a Federal statute expressing our loyalty to the flag, and that we ourselves, not only as a matter of admiration—because that might be merely sentimental—but also as showing that we at any time and all times are willing to give our lives for the flag. We give our sons,

and they are fighting for the flag which represents their country, and which is the representative of their country.

Innumerable instances in war have been shown that men have voluntarily, when the bullets were coming like rain, picked up the flag as the last act that they might do, to uphold and support the banner of their country in the very jaws of death.

I went down to the Department of Justice and asked them as to whether they could find a Federal statute covering the abuses, mutilation, destruction, or contempt of our flag, and they said no. I will not take time to read this paper which they gave me regarding the matter, but I would like to put this copy in the record.

Mr. CARLIN. It can be inserted in the record.

(The paper above referred to is copied in the record in full, as follows:)

DEPARTMENT OF JUSTICE,
Washington, D. C.

SIR: The department is in receipt of so many letters asking information concerning the law governing the use of the United States flag that it has felt compelled to prepare the following general statement in answer thereto:

Statutory provisions with respect to the Attorney General giving opinions upon questions of law relates solely to inquiries submitted to him by the President or the head of an executive department, and it has been the uniform practice of the department to decline to answer such questions when submitted by other persons. It may be stated, however, that a majority of the States have passed laws regulating the use of the United States flag, the constitutionality of which was upheld in the case of *Halter v. Nebraska* (205 U. S. Repts., 34). At p. 39, in a footnote, are citations to the laws of the various States which then had statutes of this character.

At the last session Congress enacted a statute, act approved February 8, 1917, punishing the improper use of the national colors in the District of Columbia. The department is aware of no other Federal legislation bearing upon the subject except that contained in section 5 of the act of February 20, 1905 (33 Stat. L., 725), prohibiting the registration of a trade-mark which "comprises the flag or coat of arms or other insignia of the United States."

Respectfully, for the Attorney General,

Assistant Attorney General.

Mr. NELSON. There are two offenses. First, to mutilate it—that is, to do something to injure it in some way; and then casting contempt by word or act?

Mr. SMITH of Michigan. Yes.

Mr. NELSON. How would you define "contempt" by word? What would be sufficient?

Mr. SMITH of Michigan. Swearing at it and expressing contempt for it, saying that the German flag is a better flag than ours, or expressing loyalty to another flag in preference to our flag would be expressing contempt for our flag. This paper of the Attorney General that has been put in the record says they get innumerable inquiries about a Federal statute preventing the desecration of the flag of the United States, and they have nothing to send in reply but that little reference to Justice Harlan's decision, and that they hand them this little paper stating that most of the States have a flag law which prevents people from using it for advertisements.

You will notice that my bill does not cover advertisements. Why? Because here are a number of cases. For instance, I saw a very beautiful emblem of the flag put on a piece of paper advertising that paper for sale, and I would not want, where it is thoroughly for

patriotic purposes, to prevent that—offering for sale the words “Your Flag and My Flag,” etc., put to music, sold for a certain amount by the thousand. I do not think there should be a penalty for that, and anyway it should not call for the same penalty as should apply to a person who violated willfully the sanctity of the flag.

Mr. CARLIN. Will you give us the reference to Judge Harlan’s decision?

Mr. SMITH of Michigan. It is in Two hundred and fifth United States Reports, page 34, the case of *Halter v. Nebraska*.

Mr. NELSON. Have any cases come to your attention where persons have violated the flag?

Mr. SMITH of Michigan. Yes; I will call your attention to some of them. I have two or three cases where I think they have been used for advertising purposes that might come under the State laws. I think the way the State laws could better subserve the purpose is to provide that no one without a permit of the governor of the State could use the flag as an advertisement.

Mr. WHEELER. I saw in the paper some time ago that under some act, whether Federal or State I do not know, they prohibited the use of the flag for pillow covers and cushion covers. Under what law was that?

Mr. SMITH of Michigan. The State law. No Federal act exists preventing a person from tearing the flag up, or stamping it in the ground, or mutilating it, or doing anything to it. There is no law of your country preventing that, but there are State laws.

Mr. NELSON. May I ask whether the States have generally covered the offense by State laws, or just a few States?

Mr. SMITH of Michigan. I have the California law here.

Mr. NELSON. I mean, generally.

Mr. SMITH of Michigan. No; there are seven States that have no law at all on the subject, and I would like to put them in the record. Until the last legislatures met, Arkansas, Florida, Georgia, Kentucky, Oklahoma, South Dakota, and Tennessee had no flag law at all. At the last legislatures the States of Georgia and Tennessee enacted such laws, but they were not available so that I could get them.

I have stated that the States prevent the use of the flag for advertising. I got a letter in my mail with a most beautiful emblem on it. Would a person think that should not be permitted [exhibiting paper]? This came last night.

Mr. NELSON. Would the States prevent the use of that in that way?

Mr. SMITH of Michigan. In advertising, if it is an advertisement.

Mr. NELSON. As a means of sale?

Mr. SMITH of Michigan. I would not say that it should come under those laws, but still it depends on the circumstances. Certainly nobody would ever complain of that use in this [exhibiting book]. Here is a little book of military poems compiled by a young man named Smith—no relation of mine—at Kellyfield, Tex., where my boy is now serving, that carries a beautiful flag on it, and I certainly would not say that would come under the law.

Here is one I picked up on my table this morning. That comes from Memphis, Tenn., on a pamphlet that is sent out for a good purpose, and I presume to make it more attractive they put on it a beautiful picture of the flag.

These things, being for advertising purposes, are prohibited by a large number of the States.

I will show you what the statute of California is. It reads: "Any person who shall desecrate the flag of the United States by printing thereon, or attaching thereto, any advertisement of any nature whatsoever shall be deemed guilty of a misdemeanor." That is the whole law of California against the desecration of the flag.

A man could take the flag down and tear it up and trample on it, or swear at it, or mutilate it and defile it and still he would not be guilty under the laws of the State of California. A misdemeanor is punishable by 30 days in jail and less than \$100 fine. In my own State of Michigan we have a little short statute of 1 page which says that the flag shall not be used for advertising. I do not think it should be prohibited for advertising if the purpose of the advertisement is a patriotic one. Then the Michigan law says: "Or shall publicly mutilate, trample upon, or publicly deface, defy, defile, or cast contempt, either by word or by act, upon any such flag, standard, colors, or ensign of the United States, shall be deemed guilty of a misdemeanor," and then it punishes by a fine of what? Why, 30 days in jail, or not less than \$5 or more than \$25.

We have Federal territory in every State in the Union where these acts could be committed irrespective of these statutes of the States, and I am sorry to say that in my own State of Michigan I find that the sanctity of the flag is continually being violated.

Mr. WHEELER. What is the difference between the flag and the colors?

Mr. SMITH of Michigan. A United States statute tells what the flag is.

Mr. WHEELER. What are the colors?

Mr. SMITH of Michigan. The "colors" are the same, the definition is the same as "flag" in the dictionary, only the word "colors" is largely confined to the Navy, "standards" are used in the Cavalry, but "flag," "colors," and "standards," are all used indiscriminately, and they are so given in Webster's Dictionary.

Mr. WHEELER. To say "summoned to the colors" would mean to the flag, and the standards of the different companies would be carried in a parade, and the ensign would be the ensign of an admiral or captain of a ship. What I am trying to get at is the "colors." For instance, a barber pole would be red, white, and blue. Would the barber be guilty of a misdemeanor for displaying that?

Mr. SMITH of Michigan. That is not a flag.

Mr. WHEELER. You say "flag, standard, colors" in the bill.

Mr. SMITH of Michigan. I would not say that would include barber poles. They are not flags in any sense, but advertisements.

Mr. WHEELER. In your examination of those different statutes did you find that they use the four words, "flag, standard, colors, or ensign"?

Mr. SMITH of Michigan. In all the States they use those four words, and in the District of Columbia statute they use the same words.

Mr. NELSON. I presume those four words would cover every use of our flag in the service?

Mr. SMITH of Michigan. Yes. I have been a little more familiar in relation to the offenses against the flag in my own State. Of course, I see more papers from my State than from other States. The first instance, however, of such a violation called to my attention was a Cincinnati case where a person defamed the flag, and the White Caps took the man out, but they simply put hot oil on his head and obliged him to pledge his loyalty, and they let him go again.

Now I have a case here reported in the Detroit Free Press.

Mr. NELSON. That case you referred to was the Bigelow case?

Mr. SMITH of Michigan. Yes. Of course, I take the papers of my own State, and in that way I suppose I see more of them there than in other States. But the flag is being desecrated in numerous States, and we ought not to permit it.

I have no ambition in this particular bill. If some gentleman of the majority who may be better entitled to it, which is responsible for legislation, will put a bill up I will work and fight to get it through. What I supremely want is this: I do not want my boy, or my neighbor's boy, or your boy, fighting for a flag we do not protect at home. I am willing to stand on that proclamation, and I am ready to do all I can to get this act through. They can take that bill, or any bill, and I will join them and work hard.

I think it is as necessary as the espionage act, which fines a man \$10,000 and sends him to prison for a number of years for any act that will be an encouragement to the enemy, and your chairman, Mr. Webb, has introduced such a bill as that to prevent people from slandering our administration and the different branches that are working night and day to stop and punish sedition, and I was glad to hear of it, because while there may be certain complaints, and so on, we have undertaken a most gigantic task, and undoubtedly while we are getting ready we will hear more complaints, but I tell you, gentlemen, it will not be but a little while, possibly less than a year, until we will not hear of anything but fighting; then it will be all fighting.

Mr. WHEELER. You believe in the espionage act?

Mr. SMITH of Michigan. I do; I voted for it.

Mr. CARLIN. I believe from your remarks that you believe we ought to stand by the administration.

Mr. SMITH of Michigan. I have stood by him all along; you are correct. He is the man who is responsible, and we have all gone into the war to win it. It is not that I am a Republican or a Democrat. I never think of that when I am considering a measure that either concerns my country or its efforts in the success of this war.

Mr. WHEELER. You believe that the man who is not with us is against us, and if he does not back up this administration he ought to go somewhere else?

Mr. SMITH of Michigan. I have said that. We ought to back the administration. We want to whip that country over there for the insults to our country, and I have given the best that I have and love for that purpose.

Mr. CARLIN. So have I. I am with you.

Mr. SMITH of Michigan. And we will wrap them in the flag if they down

Now, I spoke of the papers from my own State. I possibly see in them about the desecration of the flag, because I do not see

the papers of your State or other States. I hope they do not carry such items as this. Here is one from the Detroit Free Press of September 19, 1917:

United States flag torn to shreds in Manistee Teuton quarter.

It goes on to state that a man hauled down the flag and tore it into shreds. The article does not say what they did to him. It seems to me there is no punishment that would atone for that offense. I stand with Gen. Dick, and I wish we had more men like him, who said if any man hauls down the American flag, whether he tears it to shreds or not, he should be shot on the spot.

Here is another one from the capital of my State; Lansing State Journal, July 11, 1917. It says:

FLINT—The district attorney's office—

I do not know what the district attorney can do, because he has no statute to stand on. It says:

The district attorney's office in Detroit is considering the case of Howard Defrenn, aged 25, who was Tuesday morning rescued by the police from angry fellow employees in a local automobile factory after he had wiped his greasy hands on the American flag and cursed the banner and the men who reprimanded him for his action. Defrenn is said to have repeatedly wiped his hands on flags with which other workmen had decorated the shop.

After he did that they took him away from the mob. That is in Flint.

Here is another, from the Detroit Free Press, October 2, 1917:

THREE PAY FINES FOR SLIGHT TO THE FLAG.

Three self-styled "internationalists" who refused to bare their heads while the Star-Spangled Banner was being played at a recruiting meeting of Polish-speaking citizens in Perrien Park Sunday were fined Monday by Justice Stein. The ringleader, who, it is alleged, started a near riot by cursing the flag, was fined \$10 or 30 days, even though penitent. The others paid \$5 fines.

Here is another one, from the Grand Rapids Press, January 7, 1918:

"UBER ALLES" ON QUESTIONNAIRE IS TICKET FOR BED.

NEW HAVEN, CONN., *January 7.*

"Say 'Uncle,'" demanded a party of masked men to [this man], "and add a 'Sam' on the end."

"Now say, 'God bless Old Glory.'"

He did both. He kissed the American flag, but he couldn't sing the Star-Spangled Banner, for his lips were too swollen and his voice was weak from whimpering.

He wrote across his questionnaire "Deutschland Uber Alles" and interpreted in it that he had the doubtful honor of being an American citizen and that he has an overwhelming desire to see Germany win the war.

The party called on him to induce him to change his sentiments. He is still in bed for the pounding he received.

Here is another one, up in Marquette, Mich., December 28:

Swears at Red Cross flag; pays \$50 fine.

The article goes on to say:

MARQUETTE, *December 28.*

A man was fined \$50 to-day for having made lewd remarks in referring to a Red Cross service flag. He paid the fine out of a roll of \$200. The judge said he wished he had doubled the fine.

Mr. NELSON. That was the Red Cross flag. Your bill would not cover that?

Mr. SMITH of Michigan. I think possibly not; but he paid the fine.

Mr. WHEELER. What would be your idea about imprisoning him for the duration of the war?

Mr. SMITH of Michigan. I think that would be very mild under the circumstances.

Mr. WHEELER. Your punishment is not more than a thousand dollars or a year in prison, or both.

Mr. SMITH of Michigan. For just swearing at the flag?

Mr. WHEELER. For the mutilation of the flag.

Mr. SMITH of Michigan. There should be a more severe penalty, but I could not make the penalty so severe that it would be unconstitutional.

Mr. WHEELER. Do you not believe that a man who would wipe his hands on the flag is an enemy of this country?

Mr. SMITH of Michigan. Yes, sir.

Mr. WHEELER. Do you not think an enemy of this country ought to be locked up?

Mr. SMITH of Michigan. Yes.

Mr. WHEELER. In my judgment, either one of two things ought to be done to him; either shoot him or lock him up.

Mr. SMITH of Michigan. Here is one from the Washington Times, August 3, 1917:

HELD FOR INSULTING THE FLAG.

UTICA, N. Y., August 3.

Charged with wiping his hands on the American flag, Albert Tutaski, Prussian by birth, was held to the grand jury to-day.

Now I will tell you of a couple more. Over in an automobile factory in Lansing, 18 miles from my own home, a man wiped his hands on the flag, or spoke disrespectfully of the flag, and I am told by a good citizen of Lansing that they tied a clothesline around his foot, broke a hole in the ice, threw him into Grand River, and pulled him out, and he in that way made amends.

I will tell you another which was published in the press. A man in Lansing defiled the flag in a way that could not be put in the record. He was taken out at night, and they tried him under a tree and were about to execute that man in the peaceful State of Michigan. But because of his pleadings and promises they appointed six of their White Caps that should go out and determine upon the sentence they should impose upon him, and they came back and reported——

Mr. CARLIN. They do not call them Ku Klux?

Mr. SMITH of Michigan. They would be something of that order; probably a brother-in-law of the Ku Klux. White Caps, I call them.

Mr. WHEELER. The object is to protect the country against this disloyal element, the same as the Ku Klux did?

Mr. SMITH of Michigan. That is the purpose if the man was guilty of the offense. In this case they reported that they tar and feather this man, and I am told that they did a good job.

I have tried to explain the necessity of such a law, and you see what is happening for want of such a law; and I am supremely

interested that such legislation be enacted. If it is, I think it would be a patriotic law; I think it would be a wholesome law; I think it would support the morals of the people. It would show our love for the one thing that we fight for—to maintain the dignity and the authority of our flag.

Now, after I had drafted the bill I added section 3. Judge Harlan, in the case I have referred to, says that the flag is a creature of the United States, and they have the original jurisdiction. If we passed this bill without this last clause, I was of the impression that it would supersede the State laws. If a nonresident in my State falls on a sidewalk or is injured, the State courts have concurrent jurisdiction with the Federal court, because of his being a nonresident. The choice of courts is left open to him. By this clause 3 we preserve the jurisdiction of the State courts and provide a punishment in the United States court. If it is an aggravated offense and ought to be punished by a larger penalty, he can be tried in the Federal court. As that section is not given in the printed bill, I should like to have it go in the record.

Mr. CARLIN. That can be inserted in the record.*

(The bill as amended is copied in the record in full, as follows:)

H. R. 8987. SIXTY-FIFTH CONGRESS, SECOND SESSION.

IN THE HOUSE OF REPRESENTATIVES.

JANUARY 19, 1918.—Mr. Smith of Michigan introduced the following bill, which was referred to the Committee on the Judiciary and ordered to be printed.

A BILL To preserve the purity of our flag.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any person to publicly mutilate, deface, defile or defy, trample upon, or cast contempt, either by word or act, upon any flag, standard, colors, or ensign of the United States of America.

SEC. 2. That any person convicted of committing any of the foregoing offenses shall be punished by a fine of not to exceed \$1,000, or imprisonment not exceeding one year, or both such fine and imprisonment, in the discretion of the court.

SEC. 3. That nothing in this act shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

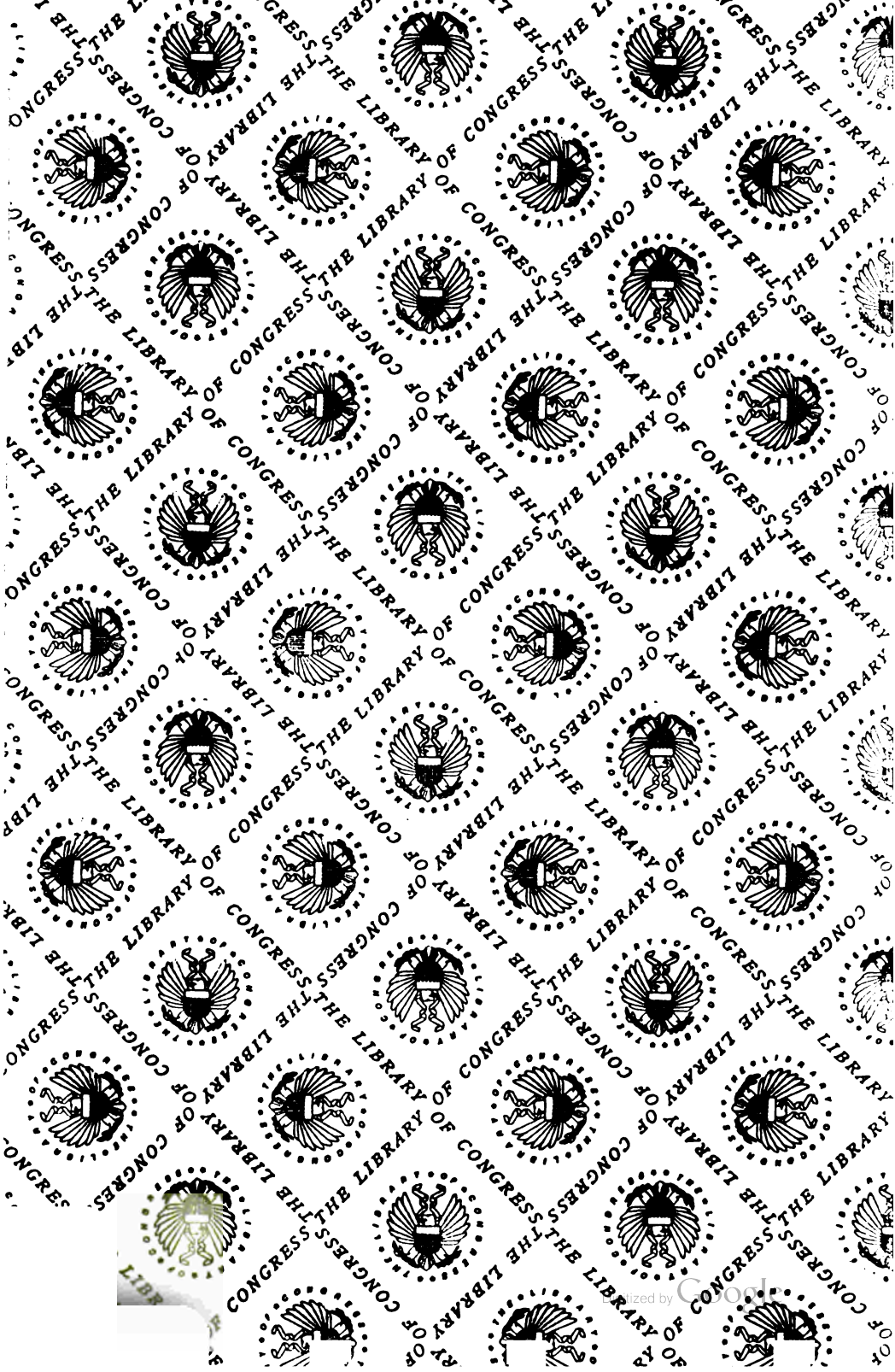
Mr. SMITH of Michigan. I do not claim any monopoly for my admiration of or loyalty to the flag or my country. I concede that every good citizen of the United States feels the same way. The fact that some law regarding the flag has been adopted by nearly every State in the Union shows that the people do believe in the sanctity of the flag, and that is the purpose and object and why I have brought this bill before you.

It is not a long bill, because the States should be free to take care of the matter of advertising, and I have shown you a few cases where it might be offensive in one State and not in another, and so I have cut advertising out of this bill. I think a man ought to be fined more than \$5 who desecrates his country's flag; he ought to pay more than the little penalty that the State laws carry for these offenses committed against the flag. Such small penalties are not severe

enough for a crime of this character, and therefore I have put on a larger penalty, and I hope you gentlemen can see your way to recommend this bill, or some other that will ultimately be passed by the House and Senate and enacted into law. I will do all I can to aid in the passage of such a law through the House and Senate.

The CHAIRMAN. I think your patriotic utterances are highly commendable, and I wish they could reach all the people of the country, and with that in view we will give you the privilege of revising your remarks, so that they will be in the form you desire.

(Thereupon, at 3.30 o'clock p. m., the subcommittee adjourned.)



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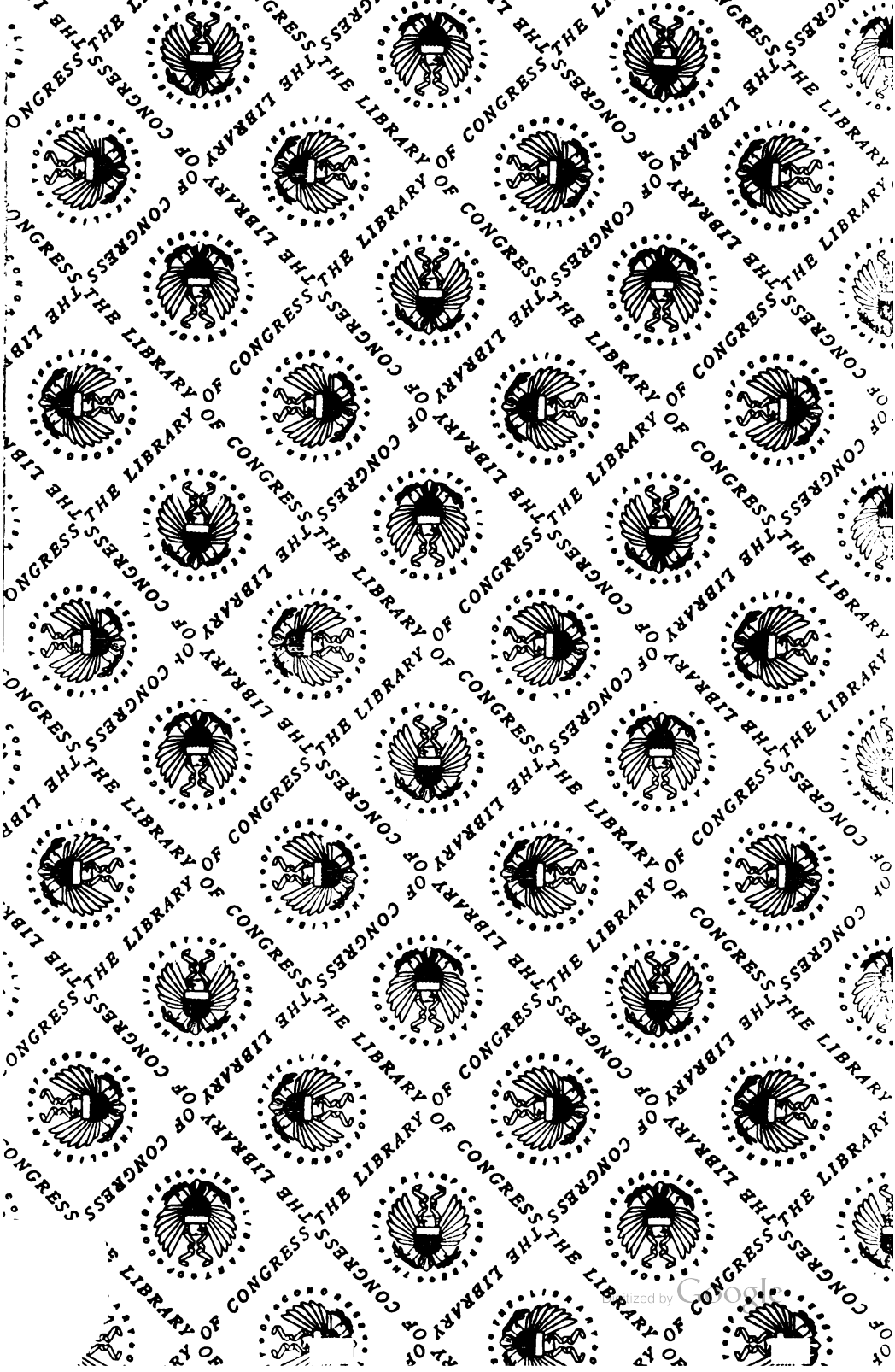
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